

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICARDO ANDERSON,

Case No. 3:16-cv-00545-MMD-WGC

Petitioner,

ORDER

v.

ISIDRO BACA, *et al.*,

Respondents.

Petitioner has paid the filing fee. The Court has reviewed the petition for a writ of habeas corpus. The petition appears to be untimely, but petitioner claims that he is actually innocent of at least some of the charges. The Court does not possess enough of the state-court record to evaluate petitioner's claim of actual innocence. The Court will serve the petition upon respondents for a response.

Petitioner has filed a motion for appointment of counsel. (ECF No. 3.) Whenever the Court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). "[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings. *McCleskey v. Zant*, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims, but are intrinsically enmeshed with them. *Weygandt*, 718 F.2d at 954. After reviewing the petition, the Court finds that appointment of counsel is not warranted.

1 It is therefore ordered that the Clerk of the Court file the petition for a writ of habeas
2 corpus pursuant to 28 U.S.C. § 2254.

3 It is further ordered that the Clerk add Adam Paul Laxalt, Attorney General for the
4 State of Nevada, as counsel for respondents.

5 It is further ordered that the Clerk electronically serve upon respondents a copy of
6 the petition and this order. In addition, the Clerk will return to petitioner a copy of the
7 petition.

8 It is further ordered that respondents will have forty-five (45) days from the date on
9 which the petition was served to answer or otherwise respond to the petition.
10 Respondents must raise all potential affirmative defenses in the initial responsive
11 pleading, including untimeliness, lack of exhaustion, and procedural default. Successive
12 motions to dismiss will not be entertained. If respondents file and serve an answer, then
13 they must comply with Rule 5 of the Rules Governing Section 2254 Cases in the United
14 States District Courts, and then petitioner will have forty-five (45) days from the date on
15 which the answer is served to file a reply. If respondents file a motion, then the briefing
16 schedule of Local Rule LR 7-2 will apply.

17 It is further ordered that any exhibits filed by the parties must be filed with a
18 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF
19 attachments that are filed further must be identified by the number or numbers (or letter
20 or letters) of the exhibits in the attachment. The hard copy of any additional state court
21 record exhibits must be forwarded — for this case — to the staff attorneys in Las Vegas.
22 The Court otherwise waives compliance with Local Rule LR IA 10-3(e) with regard to the
23 exhibits.

24 It is further ordered that henceforth, petitioner must serve upon respondents or, if
25 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,
26 motion or other document submitted for consideration by the Court. Petitioner must
27 include with the original paper submitted for filing a certificate stating the date that a true
28 and correct copy of the document was mailed to the respondents or counsel for the

1 respondents. The Court may disregard any paper received by a district judge or
2 magistrate judge that has not been filed with the Clerk, and any paper received by a
3 district judge, magistrate judge, or the Clerk that fails to include a certificate of service.

4 It is further ordered that petitioner's motion for appointment of counsel (ECF No.
5 3) is denied.

6 DATED THIS 21st day of December 2016.

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9 MIRANDA M. DU
10 UNITED STATES DISTRICT JUDGE
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